

## REMARKS

The Non-final Office Action, mailed August 13, 2008, considered claims 1-3, 6-9, 11-14, 17-24, 26-29 and 32-36. Claims 1-3, 6-9, 11-13, 17-24, 26-29, and 33-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kent et al., IP Encapsulating Security Payload, (1998) (hereinafter *Kent*), in view of Fieres et al., U.S. Patent No. 6,178,504 (filed Mar. 12, 1998) (hereinafter *Fieres*), and further in view of de Jong et al., U.S. Patent Pub. No. 2004/0054628 (filed Sep. 13, 2002) (hereinafter *de Jong*). Claims 14 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kent*, in view of *Fieres*.<sup>1</sup>

By this paper, no claims have been amended, and Applicant traverses the rejections. As such, claims 1-3, 6-9, 11-14, 17-24, 26-29, and 32-36 remain pending, of which, only claims 1, 14, 17 and 29 are independent claims.

The present application is generally directed to encrypting and decrypting messages using tokens generated by value types, where the value types include collections of executable instructions for data handling, including instructions that tell a computer system how to read data associated with a specific security token that was created using a specific value type. In particular, independent claims 1 and 14 are directed to computer systems that receive data encrypted using these specialized security tokens, whereas independent claims 17 and 29 are directed to systems that send messages using the specialized tokens.

The art cited in the preset Office Action fails to disclose each and every element of the claims as now recited. In particular, claims 1, 17 and 29 were rejected under 35 USC 103 as being obvious over *Kent* in view of *Fieres* and *de Jong*. Claim 14 was rejected under 35 USC 103 as being obvious over *Kent* in view of *Fieres*. However, each of these references fails at least to show security tokens created using the value type as is now recited by the claims of the present application as well as value types as now defined in the claims of the present application. *Fieres* is directed to providing the ability to ship worldwide cryptographic capabilities. See *Fieres* at Abstract. The Office Action at page 4, second full paragraph appears to equate the classes of service (COSs) disclosed in *Fieres* with the value types claimed in the present

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicants reserve the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

application. While the value types of the present application are defined as including collection of executable instructions for data handling, including instructions that tell a computer system how to read data associated with a specific security token, and that the security token is created using the value type, *Fieres* teaches that the classes of service "consist of a COS identifier...and a descriptive part which contains the identifier of the associated method and constraints which must be evaluated before access to the method is granted. Col. 11, lines 13-19. *Fieres* does not appear to teach that the classes of service include instructions that tell a computer system how to read data associated with a specific security token that was created using the value type. The Office Action asserts that *Fieres* does show this by citing to *Fieres* at Col. 5, lines 17-35 and stating that "—Each type of COS has a particular set of cryptographic functions and supporting library programs for handling a data request...." However, the portions of *Fieres* cited (namely Col. 5, lines 17-35) are not a description of the COS. Careful examination of *Fieres* reveals that COSs are not even introduced until Col. 6, line 20. As noted, *Fieres* teaches that COSs consists of (in patent parlance, terminology excluding other elements (see MPEP 2111.03)) a COS identifier and a descriptive part. See *Fieres* at Col. 11, lines 13-19. Thus, Applicant respectfully asserts that *Fieres* fails to teach value types of the present application which are defined as including collection of executable instructions for data handling, including instructions that tell a computer system how to read data associated with a specific security token, and that the security token is created using the value type

Additionally, *Fieres* seems to be silent with respect to teaching that the classes of service create security tokens. In contrast, *Fieres* teaches that the classes of service themselves may be considered to be security tokens (see e.g. *Fieres* at col. 13, lines 29-30), but does not appear to teach that the classes of service create security tokens. Neither *Kent* nor *deJong* compensate for the deficiencies of *Fieres* in this respect.

Regarding claim 14, the claim is directed to a value type or private key that is only accessible to the sending computer system and the receiving computer system in the transaction. The art cited in the present Office Action does not appear to teach or suggest this limitation. Additionally, it does not appear that the present Office Action has addressed this limitation.

Applicant further submits that the motivation to combine set forth for each of the references is insufficient in view of recent Supreme Court precedent and newly implemented Patent Office examination guidelines. In particular, MPEP 2141 defines a number of rationales

that may be articulated for showing obviousness under 35 USC 103<sup>2</sup>. The Office Action appears to be relying on the traditional Teaching, Motivation, or Suggestions to combine rationale (TSM). However, the Supreme Court precedent set forth in *KSR International Co. v. Teleflex Inc. (KSR)*, 550 U.S. 398 requires more than what has been articulated in the present Office Action. It appears that the Patent Office agrees with this analysis in that the guidelines to the Examiners at MPEP 2143 state that when the TSM test is used: "Office personnel must articulate the following: (1) a finding that there was some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) a finding that there was reasonable expectation of success; and (3) whatever additional findings based on the *Graham* factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness." The present Office Action fails to set forth a prima facie case at least for the reason that it does not articulate any finding with respect to reasonable expectations of success in combining the cited art. MPEP 2143 further states that "If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art." Thus, the Office Action does not set forth a Prima Facie case of obviousness. For this reason alone, the next Office Action may not be made final. See MPEP 706.07(a).

In view of the foregoing, Applicants respectfully submit that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicants acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicants reserve the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any

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<sup>2</sup> The rationales articulated in MPEP 2141 include: (A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Official Notice, explicitly or implicitly, Applicants specifically request that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 15<sup>th</sup> day of December, 2008.

Respectfully submitted,

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